

BEFORE THE STATE BOARD OF EQUALIZATION
OF THE STATE OF CALIFORNIA

In the Matter of the Appeal of)
DENNIS W. AND EMIKO LEGGETT)

Appearances:

For Appellants: Dennis W. Leggett,
in pro. per.

For Respondent: Bruce R. Langston
Counsel

O P I N I O N

This appeal is made pursuant to section 19057, subdivision (a), of the Revenue and Taxation Code from the action of the Franchise Tax Board in denying the claims of Dennis W. and Emiko Leggett for refund of personal income tax in the amounts of \$1,592, \$1,747, and \$346 for the years 1978, 1975, and 1980, respectively.

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The issue in this appeal is whether appellant-husband (hereinafter "appellant") was a resident of California during 1978, 1979, and 1980.

On April 15, 1982, respondent received amended personal income tax returns from appellant for the years 1978, 1979, and 1980. The amended returns reported roughly one-half of his gross earnings for those years.

Attached to each return was a statement asserting, in part:

A recent case, Sasser'v. State of California, decided that a person who spends "a significant portion of his time" out of the state even though he is a resident of the state need not pay income tax. If married then the wife must pay on half the income only. . . .

On August 30, 1982, respondent requested additional information about appellant's residence and activities during the years at issue. Appellant's wife responded on September 1, 1982, stating that her husband was an engineer (civilian) with the U.S. Navy Department and that his contract with the Navy required him to be aboard ships for a minimum tour of ten months per year. She also stated that her husband owned and maintained a family home for his wife and son in California, was registered to vote and voted by absentee ballot in California, maintained California checking and savings accounts, held a California driver's license, owned an automobile registered in California, and was a member of the seaman's union, paying his dues to an office in California. The statement also indicated that appellant owned no property outside of California and took no steps to become a resident of any other state.

From the information provided, respondent determined that appellant's closest ties to any state were to California and denied the claims for refund. Appellants then filed this appeal'.

At the hearing in this matter,, appellant indicated that 'his wife had answered the aforementioned questionnaire incorrectly in several respects. He stated that he was not registered to vote in California and had never voted here; He also disavowed the statement that he maintained a family home in California. According to appellant, the U.S. Navy provided a direct allotment to his wife from which she maintained the home: He also

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noted that although he mailed his seaman's union dues to the union's San Francisco office, he could have chosen to mail them to the out-of-state headquarters. Apparently, union membership was not required for his job with the U.S. Navy, and appellant remained a member of the union only to preserve job opportunities for himself in the event he stopped working for the U.S. Navy. Lastly, appellant acknowledged that he received a one-month vacation every six months and spent these vacations in California.

Revenue and Taxation Code section 17041 imposes a tax on the entire taxable income of every resident of this state. Revenue and Taxation Code section 17014 defines the term "resident" as follows:

(a) "Resident" includes:

(1) Every individual who is in this state for other than a temporary or transitory purpose.

(2) Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

* * *

(c) Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state.,

We discuss first what appears to be the resolved question of domicile. Under California law, if appellant had become a non-resident while retaining his California domicile, one-half of his income, both in-state and out-of-state, would have been taxable to his wife. (United States v. Mitchell, 403 U.S. 190 [29 L.Ed.2d 406] (1971); Appeal of Robert M. and Mildred Scott, Cal. St. Bd. of Equal., March 2, 1981.) Since appellant excluded one-half of his income on the amended returns filed for the **year's at issue**, he apparently concedes that he was a California domiciliary for those years, but contests his status as a resident. Our belief that he does not dispute his status as a domiciliary is supported as well by the cases which he cites in support of his position. Appellant relies on the Appeal of W. J. Sasser (cited in his letter as "Sasser v. State of California"), decided by this board on November 5, 1963, and the Appeal of Richard W. Vohs, decided by this board on September 17, 1973. Both those cases concerned individuals who were domiciliaries of

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California, but whose absences from the state were considered to have been for other than a temporary or transitory purpose. Considering all of the above, we take the question of domicile as settled.. The remaining inquiry is whether appellant's absences from California were for temporary or transitory purposes.

In the Appeal of David J. and Amanda Broadhurst, decided on April 5, 1976, we summarized the case law and regulations interpreting the phrase "temporary or transitory purpose" as follows:

Respondent's regulations indicate that whether a taxpayer's purposes in entering or leaving California are temporary or transitory in character is essentially a question of fact, to be determined by examining all the circumstances of each particular case. [Citations.] The regulations also provide that the underlying theory of California's definition of "resident" is that the state where a person has his closest connections is the state of his residence. [Citation.] The purpose of **this** definition is to define the class of individuals who should contribute to the support of the State because they receive substantial benefits and protections from its laws and government. [Citation.] Consistently with these regulations, we have held that the connections which a taxpayer maintains in this and other states are an important indication of whether his presence in **or** absence from California is temporary or transitory in character. [Citation.] Some of the contacts we have considered relevant are the maintenance of a family home, bank accounts, or business interests; voting registration and the possession of a local driver's license; and ownership of real property. [Citations.] Such connections are important both as a measure of the benefits and protection which the taxpayer has received from the laws and government of California, and **also** as an objective indication of whether the taxpayer entered or left this state for temporary or transitory purposes. [Citation.]

In the instant matter appellant's wife and child lived in California in the family home. Appellant has contended that the maintenance of that home was not attributable to himself but instead to a separate

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allotment from the U.S. Navy. However, appellant has provided no evidence showing that the allotment received by his wife was so unconnected with his employment that he cannot be considered the ultimate source of the home's maintenance.

Reviewing the balance of the record, we note that appellant owned real property only in California. Although he denied that he had been registered to vote or had voted in California, he maintained California checking and savings accounts, held a California driver's license, and registered his automobile here. We further note that appellant utilized his leave periods to regularly return to California every six months, even though he spent some time in other states. He also utilized the services of a California doctor. On the other hand, there is a conspicuous absence of any similarly significant connections with any other state or country. His closest connections appear to be with California, and that is an important indication that his absences were for temporary or transitory purposes.. (Appeal of Benton R. and Alice J. Duckworth, Cal. St. Bd. of Equal., June 22, 1976; Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.)

Appellant's circumstances also contrast markedly with that of the taxpayers in the Sasser and Vohs appeals mentioned above. Those cases involved individuals whose visits to California were for short, irregular, and infrequent periods, and who owned no property in California. Furthermore, they each, were unmarried and had no dependents in California.

On the basis of the collective connections that appellant maintained with California, we are of the opinion that appellant's absences from this state were for temporary or transitory purposes, within the meaning of respondent's regulations. Consequently, appellant was a resident of California during the years under appeal, and respondent's determination to that effect must be upheld.

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O R D E R

Pursuant to the views expressed in the opinion of the board on file in this proceeding, and good cause appearing therefor,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED, pursuant to section 19060 of the Revenue and Taxation Code that the action of the Fran'dhise Tax Board in denying the claims of Dennis W. and Emiko Leggett for refund of personal income tax in the amounts of \$1,592, \$1,747, and \$346 for the years 1978, 1979, and 1980, respectively, be and the same is hereby sustained.

Done at Sacramento, California, this 31st day of January , 1984, by the State Board of Equalization, with Board Members Mr. Nevins, Mr. Dronenburg, Mr. Collis, Mr. Bennett and Mr. Harvey present.

Richard Nevins - _____, Chairman

Ernest J. Dronenburg, Jr. , Member

Conway H. Collis , Member

William M. Bennett , Member

Walter Harvey* , Member

*For Kenneth Cory, per Government Code section 7.9